



After reviewing the record and considering the briefs and arguments of the parties, the Appeals Board finds as follows:

Claimant injured his neck when his office chair fell backwards onto the floor on December 10, 1991. At that time, claimant was both an employee and the sole stockholder of Resource Management of Kansas, Inc. Claimant also was the sole stockholder of Oklahoma Rehabilitation Consultants, Inc., located in Sand Springs, Oklahoma. The Oklahoma corporation, on the date of claimant's accident, December 10, 1991, was managed by his wife, Jean Smith. Claimant argues that Resource Management of Kansas, Inc., his employer on the date of his accident, was providing him with fringe benefits in the form of life and health insurance at a monthly cost to the corporation of \$562.69 per month. Claimant testified that the payment of that benefit was transferred to the Oklahoma corporation sometime in February of 1992 because he had decided to discontinue doing business in Kansas. Claimant testified that the insurance benefit was continued with the monthly payment premium being made by the Oklahoma corporation instead of the Kansas corporation.

It is claimant's position that the weekly cost of the life and health benefits paid by Resource Management of Kansas, Inc., on the date of claimant's work-related injury, December 10, 1991, should be included in his average gross weekly wage for the determination of permanent partial general disability benefits. Claimant argues that when the previous payments were transferred to Oklahoma Rehabilitation Consultants, Inc., that the insurance benefit was effectively discontinued.

In determining an injured worker's gross average weekly wage, additional compensation, such as the employer's average weekly cost of life and health insurance, shall be included, if discontinued. See K.S.A. 1991 Supp. 44-511(a)(2). Claimant argues that his sole ownership of both of the subject corporations does not make a difference as to whether the cost of the insurance benefit should be added to his gross average weekly wage. It is claimant's position that the Kansas corporation discontinued the insurance benefit when the premium payment was transferred to the Oklahoma corporation. Therefore, the corporation's monthly cost of the benefit should be added in calculating his average gross weekly wage for determining his permanent partial general disability.

The Administrative Law Judge found that the claimant was the sole owner of both corporations and that the insurance benefit was not discontinued. He, therefore, refused to add the cost to the claimant's average gross weekly wage. The Appeals Board affirms the Administrative Law Judge's finding. The Appeals Board finds the life and health insurance benefit was not discontinued as the payment was simply transferred to the Oklahoma corporation which was also solely owned by the claimant. Additionally, the Appeals Board finds that claimant's Exhibit A-1 entered into evidence in the deposition of Patrick Walters, certified public accountant employed by the claimant, disclosed that at the time of claimant's accident the life and health benefits were provided under one policy which was in the name of the Oklahoma corporation, Oklahoma Rehabilitation Consultants, Inc. Thus, the responsibility for paying the monthly premium and providing the insurance benefits to the covered employees was the continuing responsibility of the Oklahoma corporation and not the Kansas corporation.

All other findings and conclusions contained in the Award of the Administrative Law Judge dated September 30, 1994 that are not inconsistent with the findings set forth in this Order are incorporated herein and adopted by the Appeals Board.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated September 30, 1994 should be and the same is hereby affirmed as follows:

**AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Bruce B. Smith, and against the respondent, Resource Management of Kansas, Inc., and its insurance carrier, St. Paul Fire & Marine Insurance Company, for an accidental injury which occurred on December 10, 1991, and based upon an average weekly wage of \$491.39.

Claimant is entitled to 6.14 weeks of temporary total compensation at \$289 per week in the sum of \$1,774.46, followed by 408.86 weeks at \$65.52 per week or \$26,788.51 for a 20% permanent partial general body disability, making a total award of \$28,562.97.

As of April 26, 1996, there is due and owing claimant 6.14 weeks of temporary total disability compensation at the rate of \$289 per week or \$1,774.46, followed by 222.29 weeks of permanent partial disability compensation at the rate of \$65.52 per week in the sum of \$14,564.44, for a total of \$16,338.90 which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$12,224.07 is to be paid for 186.57 weeks at the rate of \$65.52 per week, until fully paid or further order of the Director.

Pursuant to K.S.A. 44-536, the claimant's contract of employment with his counsel is hereby approved.

All authorized outstanding medical expenses are ordered paid by the respondent.

Future medical expenses shall be awarded only upon proper application and approval of the Director.

Unauthorized medical expense of up to \$350.00 is ordered paid to or on behalf of claimant upon presentation of proof of such expense.

Fees necessary to defray the expense of administration of the Workers Compensation Act are hereby assessed against the respondent to be paid directly as follows:

Barber & Associates Transcript of Regular Hearing	\$283.20
ABC Certified Shorthand Reporters Deposition of Bruce Benson Smith	Unknown
Bumgardner & Neil Deposition of Eugene Field, M.D.	Unknown
Appino & Biggs Reporting Service Deposition of Michael J. Poppa, D.O.	\$236.85

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1996.

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BOARD MEMBER

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c:     John M. Ostrowski, Topeka, KS  
       Vincent A. Burnett, Wichita, KS  
       Joel P. Hesse, Wichita, KS  
       John D. Clark, Administrative Law Judge  
       Philip S. Harness, Director